

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VOICESTREAM PCS II CORPORATION d/b/a
VOICESTREAM WIRELESS, a Delaware corporation,

Plaintiff,

vs.

Civ. No. 00-1402 WWD

CITY OF SOCORRO, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

BACKGROUND.

This matter comes before the Court upon the Verified Petition for Review of Zoning Decision and for Writ of Mandamus filed by VoiceStream PCS II Corporation (“VoiceStream”) against the City of Socorro, New Mexico, the City Council of the City of Socorro, and the individual Councilors of the City of Socorro (hereinafter collectively referred to as “Socorro”). VoiceStream applied for a special use permit to allow them to construct an eighty foot tower for wireless communication at a specific location in the city limits of Socorro. After a public meeting, the Planning, Zoning, and Land Use Commission unanimously recommended to the City Council that the special use permit be denied. The City Council denied the application. VoiceStream contends that it met the requirements set forth in the City’s Zoning Code; that the denial of the permit by Socorro was arbitrary and capricious, and that it was in violation of the applicable City, State and Federal Laws, including 47 U.S.C. § 332(c)(7) and 47 U.S.C. § 157(a). VoiceStream

sought a writ of mandamus compelling Socorro to act in accordance with the law and to issue the sought permit. Socorro filed an answer to VoiceStream's petition, and VoiceStream later filed Petitioner's Statement of Appellate Issues, a brief supporting its position; to which Socorro filed a response.

DISCUSSION.

The parties have raised and discussed well a number of issues which bear on the question of whether VoiceStream was entitled to have its zoning application granted. VoiceStream does not challenge Socorro's zoning ordinance, only the way it was applied. Unfortunately, neither side has created such a record in the hearings below as would make me feel confident in rendering a decision on the questions presented.

I am not satisfied with VoiceStream's assumption that an unsupported pronouncement by the Zoning Administrator as to compliance with "Colocation" provision within the zoning ordinance is conclusive. VoiceStream has oversimplified what is required of it in seeking the permit in question. VoiceStream's counsel will need to create a more complete record for review. Also, in this instance, Socorro shall not be allowed simply to deny VoiceStream's application without articulated written reasons supported by substantial evidence in a recorded public hearing. Even part time citizen councillors should know when they are in a situation where they need professional help; for example, an advising attorney. The bald exercise of authority is not enough in the circumstances presented.

CONCLUSION.

This matter should be remanded to the City Council of the City of Socorro for the purpose of setting and conducting a hearing, receiving evidence on the issues presented by VoiceStream's

application, and making its decision in writing with reasons stated as to VoiceStream's application. In the event that further action is required by this Court, proceedings in this cause may be recommenced.

WHEREFORE,

IT IS ORDERED that this matter be remanded to the City Council of the City of Socorro for further proceedings in accordance with this Order.

IT IS FURTHER ORDERED that the Petition for Mandamus be **DENIED**.

FINALLY, IT IS ORDERED that this cause be closed administratively subject to being reopened by further Order of the Court.


UNITED STATES MAGISTRATE JUDGE